

ATTACHMENT

PLEASE NOTE: *Publication for public comment is not, and shall not be construed as, a recommendation or approval by the Board of Governors of the materials published.*

Proposed amendment to Rule 262, Grounds for Dismissal, of the Rules of Procedure of the State Bar of California.

The full text of the rule with amendments in legislative style is given below. Strikeout (~~Sample~~) indicates that the text is being removed while red text (~~Sample~~) indicates new text.

RULE 262. GROUNDS FOR DISMISSAL

(a) Voluntary Dismissal for Insufficiency of Evidence. The party initiating a proceeding may move for voluntary dismissal of the proceeding, in whole or in part, based on unavailability or insufficiency of evidence. A dismissal under this paragraph shall be without prejudice unless the Court determines, in the exercise of discretion, that the proceeding should be dismissed with prejudice.

(b) Defective Service. A proceeding may be dismissed due to a defect in the manner of service of the initial pleading. Such a dismissal shall be without prejudice, and may take the form of an order that the proceeding will be dismissed without prejudice if proof of proper service is not filed within a specified time. A motion to dismiss due to a defect in the manner of service of the initial pleading shall be made no later than the date on which the moving party's response is to be filed or, if the moving party's default is entered, the expiration of the time to move for relief from default, or, if no response is provided for, no later than twenty (20) days after the date the allegedly defective service was made. Failure to file a timely motion under this paragraph shall preclude the party from a later assertion of the alleged defect in service as a ground for dismissal of the proceeding.

(c) Defective Initial Pleading.

(1) A proceeding may be dismissed for failure of the initial pleading to state a legally sufficient basis to warrant the action proposed, or, in a disciplinary proceeding, for failure of the initial pleading to state a disciplinable offense or to give sufficient notice of the charges.

(2) A motion to dismiss a disciplinary proceeding due to the failure of the initial pleading to give sufficient notice of the charges shall be made no later than the date on which the moving party's response

is to be filed, or, if no response is provided for, no later than twenty (20) days after the service of the initial pleading. Failure to file a timely motion under this subparagraph shall preclude the party from a later assertion of the alleged inadequate notice of the charges as a ground for dismissal of the proceeding, but shall not preclude an assertion of inadequate notice for other purposes. A motion to dismiss for failure of the initial pleading to state a disciplinable offense may be made at any time prior to a finding of culpability.

(3) A dismissal under this paragraph shall be without prejudice, and at least one opportunity shall be given to file an amended initial pleading. Unless otherwise ordered, any amended initial pleading shall be filed within twenty (20) days of service of the order dismissing the proceeding or service of the Review Department decision in the matter, whichever is later. When a proceeding has previously been dismissed without prejudice based on a defect in the initial pleading, and the party has filed an amended initial pleading which does not cure the defects identified in connection with the previous dismissal, the Court shall have discretion to dismiss the proceeding with prejudice. A dismissal under this paragraph may be in the form of an order that the proceeding will be dismissed, with or without prejudice, as appropriate, if an amended initial pleading is not filed within a specified time.

(d) Barred by Statute or Rule. A proceeding may be dismissed on the ground that it is barred by any applicable statute or rule.

(e) Furtherance of Justice.

(1) The party initiating a proceeding may move to dismiss in the furtherance of justice. A dismissal under this paragraph shall be without prejudice unless the motion seeking dismissal shows good cause why the proceeding should be dismissed with prejudice.

(2) The Court on its own motion, after the parties are afforded notice and an opportunity to object, may dismiss a proceeding with or without prejudice in the furtherance of justice. The reasons for the dismissal and the determination of whether the dismissal is with or without prejudice shall be set forth in a written order.

(3) Prior to dismissing a proceeding on its own motion pursuant to paragraph (2) above, the Court shall issue an order to show cause notifying the parties of the Court's intent to dismiss the proceeding in the interests of justice and the proposed reasons for its dismissal. Within ten (10) days of service of the Court's order to show cause, the parties may file a response to the Court's order,

which may include declarations, an offer of proof and points and authorities either in support of or in opposition to the Court's intended action. The State Bar may include, in its response, information concerning prior investigation matters which were closed with warning letters, resource letters, agreements in lieu of disciplinary prosecution, other agreements resolving investigations, and impositions of discipline including private reprovls and/or any other evidence of prior conduct tending to establish a common plan, scheme or device.

(f) Agreement in Lieu of Discipline. A disciplinary proceeding may be voluntarily dismissed because the State Bar and the respondent have entered into an agreement in lieu of discipline pursuant to Business and Professions Code section 6092.5(i). A dismissal under this paragraph shall be without prejudice, provided, however, that successful completion of the agreement in lieu of discipline shall bar subsequent prosecution of the respondent based on the misconduct charged in the dismissed proceeding.

(g) Discovery Sanction. Dismissal may be ordered as a discovery sanction. A dismissal under this paragraph shall be with prejudice unless the Court orders otherwise for good cause shown.

(h) Future Consolidation. Upon motion of the State Bar, a proceeding may be dismissed in order to permit it to be refiled at a later date and consolidated with an anticipated proceeding involving the same member that is not yet ready to be commenced. A dismissal under this paragraph shall be without prejudice. No dismissal under this paragraph shall be entered on the Court's own motion.

(i) Resignation or Disbarment. If the member who is the subject of a proceeding resigns or is disbarred during the pendency of the proceeding, the Court shall take judicial notice of the Supreme Court's order accepting the resignation or ordering the disbarment, and shall dismiss the proceeding. Such dismissal shall be without prejudice to further proceedings in the event of a petition for reinstatement.
